

Title 3. Food and Agriculture
(Notice Published January 25, 2002)

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department), pursuant to rulemaking authority granted by Section 407 and 61341, Food and Agricultural Code (FAC), in order to implement, interpret, and make specific Sections 61382, 61383, and 61384 of the Food and Agricultural Code, proposes to amend Sections 1873, 1931, and 1932, and adopt Section 1933 in Title 3, Chapter 3, California Code of Regulations relating to unlawful practices in marketing milk and dairy products.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interest person, may adopt the proposal substantially as set forth without further notice.

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department, addressed to Greg Lawley, Department of Food and Agriculture, Dairy Marketing Branch, 1220 N Street, Room A-202, Sacramento, CA, 95814, no later than 5:00 p.m. Monday, March 11, 2002. Written comments may also be sent to Greg Lawley via electronic mail at glawley@cdfa.ca.gov; or via FAX (916) 654-0867.

CONTACT PERSON: Inquiries concerning this action may be directed to Greg Lawley at (916) 654-1456. The backup contact person is Don Loftin, at the same number.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Authority and Reference: FAC Sections 407 and 61341 authorize the Department to adopt and amend the regulations as proposed. The regulations would implement, interpret, or make specific Sections 61383 and 61384 of the FAC.

The enactment of SB 1381, Statutes of 2000, repealed a number of statutory restrictions regarding the marketing of milk and dairy products. However, the Legislature retained other longstanding restrictions to discourage predatory marketing practices, such as selling milk and other dairy products below cost or giving items away to secure business. These regulations will clarify the

circumstances under which giving samples, conducting sweepstakes, and meeting competition are allowed.

Section 1873 will limit the amounts of various dairy products which may be given away as samples, and will also limit the number of items and length of time in one location that items may be given away.

FAC Sections 61382, 61383, and 61384 prohibit price discrimination, giving away or selling dairy products for less than cost, and allow a lawful, competitive price or condition to be met.

Section 1931 will clarify and make specific the conditions under which a lawful competitive price may be met.

Section 1932 will clarify and make specific the conditions under which a lawful competitive price may be met when multiple units of a product are sold together for one price.

Section 1933 will state the criteria to be used to determine whether sweepstakes and contests comply with the provisions of sales below cost requirements.

DISCLOSURES REGARDING THE PROPOSED ACTION

CDFA has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accord with Government Code Section 17500 - 17630: None
- Other non-discretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Significant statewide adverse economic impact on business, including the ability of California businesses to compete with businesses in other states: None
- CDFA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Adoption of these regulations will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within

California; or (3) affect the expansion of businesses currently doing business within California.

- Significant effect on housing costs: None.

SMALL BUSINESS DETERMINATION

CDFA has determined that the proposed regulations may affect small business.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(12), CDFA must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of CDFA, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CDFA invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action may be directed to:

Greg Lawley or Don Loftin
Dairy Marketing Branch
Department of Food and Agriculture
1220 N Street, Room A-224
Sacramento, CA 95814
Telephone: (916) 654-1456; CNET 464-1456

The same persons may also be contacted to request copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

CDFA will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. The text of proposed regulations and initial statement of reasons are also available on the Internet, at www.cdfa.ca.gov/dairy. When the final statement of reasons has been prepared, it will also be available at this website. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the

proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Don Loftin at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the CDFA may adopt the proposed regulations substantially as described in this notice. If CDFA makes modifications which are sufficiently related to the originally proposed text, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before CDFA adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Mary Riley at the address indicated above. CDFA will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Mary Riley at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, Initial Statement of Reasons, and the text of the proposed regulations in underline and strikeout can be accessed through the Department's website at www.cdfa.ca.gov/dairy.